

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11
---	-----------------------------------

**RECONSIDERATION OF CONDITIONAL STATEMENT REGARDING  
47 U.S.C. § 272 COMPLIANCE**

(Issued May 28, 2002)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of Track A (competition issues),<sup>1</sup> various aspects of each item on the 14-point competitive checklist, section 272 (separate subsidiary) issues and public interest considerations. The Board considered the concept of a multi-state process for purposes of its review of a Qwest application to provide in-region, interLATA services, sought comment, and subsequently issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. § 271 would be through participation in a multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service

---

<sup>1</sup> See, 47 U.S.C. § 271(c)(1)(A).

Commission, Wyoming Public Service Commission, and the Utah Public Service Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

A report was filed with the Board on September 24, 2001, addressing issues related to Track A, section 272, and general terms and conditions. The section 272 compliance issues of the September 24, 2001, report were considered in a conditional statement dated April 4, 2002.

Pursuant to 47 U.S.C. § 272, Qwest is subject to structural and nonstructural safeguards applicable to the provision of in-region interLATA service. The FCC set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.<sup>2</sup> The standards set by the FCC in those orders, in combination with the requirements of section 272, facilitate the detection of improper cost allocation and cross-subsidization between the Bell Operating Company (BOC) and its section 272 affiliate. These safeguards also ensure that BOCs do not discriminate in favor of their section 272 affiliates. The FCC has

---

<sup>2</sup> See, *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order on Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*); First Order on Reconsideration, 12 FCC Rcd 2297 (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 133 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

indicated that non-compliance with section 272 is grounds for denying relief under section 271.<sup>3</sup>

The specific provisions of section 272 include:

- Section 272(a) – separate affiliate requirement
- Section 272(b) – structural and transactional requirements
- Section 272(c) – nondiscrimination safeguards
- Section 272(d) – biennial audit requirement
- Section 272(e) – fulfillment of requests for telephone exchange service
- Section 272(f) – sunset provisions
- Section 272(g) – joint marketing
- Section 272(h) – transition provisions

As the Board noted in its April 4, 2002, conditional statement, Qwest's compliance with 272 sections (d)-(g) was not briefed prior to Liberty's report. This could only reasonably indicate that no participant had issues about Qwest's compliance with those requirements.

However, on April 23, 2002, AT&T filed comments related to the Board's conditional statement arguing that Qwest did not meet compliance requirements of section 272 (e)(1). AT&T alleges Qwest has not provided any monthly performance data or other evidence that demonstrates that it provides exchange access services to the section 272 affiliate within a period no longer than the period that it provides

---

<sup>3</sup> *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-131, 13 FCC Rcd 20599, at ¶ 322. (*Bellsouth Louisiana II Order*).

the same or comparable services to unaffiliated carriers. Further, AT&T alleges that Qwest has refused to separately report any switched access provisioning data, including loops and transport. In short, AT&T argues that Qwest has provided no evidence to demonstrate that its provisioning of exchange access services is consistent with section 272(e)(1), and urges the Board to withdraw its conditional statement of compliance until Qwest has provided such a showing.

Responding to AT&T's allegations, Qwest pointed out that AT&T raised new issues in its April 23, 2002, comments to the conditional statement. This new challenge was raised after AT&T had been afforded an opportunity to file comments on Liberty's report, and did not contest Liberty's finding that Qwest has taken adequate measures to assure compliance with section 272(e).

In the August 10, 2000, order that was issued by the Board establishing the procedural schedule and adopting the multi-state process, it was noted that any issue believed to be in agreement would not be reopened unless new information or evidence not previously available, became part of the record. The Board notes that no new evidence has been presented that was not available to it when it made its initial decision as detailed in its April 4, 2002, conditional statement.

AT&T further argues in its comments that the Board should abandon its findings and adopt the decision of the Minnesota Administrative Law Judge on the issue of section 272 compliance. AT&T does not provide any substantive support for this request, nor an explanation as to why the Board's decision was not based on the evidence before it. The Minnesota proposed decision is based on an entirely different record from the record before the Board, and as such it is inappropriate for

the Board to consider the proposed findings in making its determination of section 272 compliance in Iowa.

To the extent that some issues are to be further evaluated in the Regional Oversight Committee (ROC) OSS test or some other proceeding, the Board will incorporate that evidence into its final recommendation to the Federal Communications Commission (FCC) as to whether Qwest has fully complied with a checklist requirement. To the extent that an issue requires performance of some duty or activity on Qwest's part, Qwest will need to demonstrate that it adequately performs as expected in order for the Board to make a positive recommendation to the FCC following an application filed by Qwest.

The Board notes that as this process winds down to a point where Qwest will make its actual application with the FCC, a flurry of filings appears to be the norm. In order for the Board to finally conclude its review and examination of Qwest's compliance, it appears to be appropriate to set strict deadlines for the filing of comments and requests for reconsideration of a Board conditional statement, as well as any other filings that may be made.

### **SUMMARY**

Assuming Qwest implements each of the conclusions as set forth in the body of this order, the Board is prepared to reject the request of AT&T and indicate at this time that Qwest has conditionally satisfied 47 U.S.C. § 272. This conditional statement indicating these requirements are satisfied is subject to the same limitations noted earlier in this statement related to other proceedings and processes.

**ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

Any comments or requests for reconsideration of this conditional statement must be filed no later than close of business on the third business day following its issuance. Additionally, any responses to filings previously made in this docket must be filed no later than close of business on the third business day following the issuance of this statement. Further, any responses to all future filings and Board orders or statements in this docket must be filed no later than close of business on the third business day following the filing or issuance.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 28<sup>th</sup> day of May, 2002.